

JUDGE MARKEROUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**09 CIV 3979**

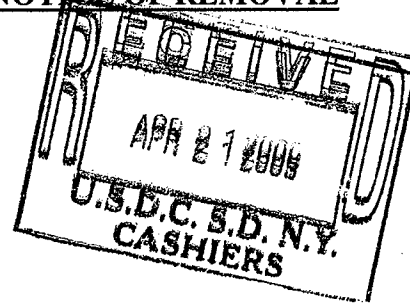
JAMES TUROWSKI,

Plaintiff,

- against -

TRIARC COMPANIES, INC., NELSON PELTZ,
Chairman & Chief Executive, individually and in
his Official capacity, PETER W. MAY, President
& Chief Operating Officer, individually and in his
official capacity, STUART I. ROSEN, Senior Vice
President and Secretary, Individually and in his
Official Capacity, and JOHN R. BENDER,
individually, and in his official capacity,

Defendants.

NOTICE OF REMOVAL

Defendants Wendy's/Arby's Group, Inc., formerly known as, "Triarc Companies, Inc." ("Wendy's/Arby's"), Nelson Peltz ("Peltz"), Stuart I. Rosen ("Rosen") (collectively hereinafter, "Defendants"), by their attorneys, Seyfarth Shaw LLP, and pursuant to 28 U.S.C. §§ 1331 and 1441, file this Notice of Removal with respect to the case identified as James Turowski v. Triarc Companies, Inc., Nelson Peltz, Peter W. May, Stuart I. Rosen, and John R. Bender, Index No. 117201/08, from the Supreme Court of the State of New York, County of New York. In support of this Notice, Defendants state as follows:

Service and Parties

1. On or about December 24, 2008, plaintiff James Turowski ("Turowski" or "Plaintiff") commenced a civil action by the filing of a Summons with Notice in the Supreme Court of the State of New York, County of New York naming the above-captioned defendants. (A true and correct copy of the Summons with Notice is annexed hereto as Exhibit A.) On or about January 16, 2009, Plaintiff effected service of the Summons with Notice upon Defendant

Wendy's/Arby's by service on the registered agent for service of process, Corporation Service Company. (A true and correct copy of the Affidavit of Service filed with the Clerk of New York County on or about February 25, 2009 is annexed hereto as Exhibit B.) On or about February 24, 2009, Defendant Wendy's/Arby's served its Notice of Appearance herein under its former corporate name. (A true and correct copy of the Notice of Appearance is annexed hereto as Exhibit C.)

2. On or about March 25, 2009, Plaintiff filed a Verified Complaint (the "Complaint") with the Clerk of the Supreme Court of the State of New York, County of New York. (A true and correct copy of the Complaint is annexed hereto as Exhibit D.)

- (a) Service of a copy of the Summons with Notice and Verified Complaint was made upon Defendant Peltz on or after April 1, 2009. (A true and correct copy of the Affidavit of Service filed with the Clerk of New York County on or about April 15, 2009 is annexed hereto as Exhibit E.) Pursuant to CPLR 308, such service will be complete on or after April 27, 2009.
- (b) Upon information and belief, Defendant Peter W. May has yet to be served with the Summons with Notice or the Verified Complaint in this action.
- (c) Service of a copy of the Summons with Notice and Verified Complaint was made upon Defendant Rosen on or after April 1, 2009. (A true and correct copy of the Affidavit of Service filed with the Clerk of New York County on or about April 15, 2009 is annexed hereto as Exhibit F.)¹ Pursuant to CPLR 308, such service will be complete on or after April 27, 2009.
- (d) Upon information and belief, Defendant John R. Bender ("Bender") has yet to be served with the Summons with Notice or the Verified Complaint in this action.
- (e) Counsel for Defendant Wendy's/Arby's first received service of a copy of the Complaint on April 10, 2009 under cover of letter from Plaintiff's counsel dated April 8, 2009.

¹ In accordance with 28 U.S.C. § 1447(b) and Local Civil Rule 81.1(b) of this Court, the annexed Exhibits A through F constitute "all records and proceedings" in the state court.

Timeliness of Removal

3. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b), having been filed within thirty (30) days after Defendants Peltz, Rosen and Wendy's/Arby's initial receipts of the Complaint, which is the "pleading from which it may first be ascertained that the case is one which is . . . removable." 28 U.S.C. § 1446(b). Moreover, in light of the fact that Plaintiff has not yet effected formal service upon Defendants May and Bender, and will not be complete with respect to Defendants Rosen and Peltz until April 27, 2009, the time within which to remove the action has not yet begun to run. See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 350-51 (1999); Varela v. Flintlock Constr., Inc., 148 F. Supp. 2d 297, 300 (S.D.N.Y. 2001) (construing Murphy Brothers and holding that thirty-day time period for removal pursuant to 28 U.S.C. § 1446(b) runs for date of service of last-served defendant).

Joinder of All Defendants in Removal

4. Removal of this case is also appropriate because all of the defendants properly served in this action are parties to this Notice of Removal. On information and belief, Defendants May and Bender have not been properly served to date. Accordingly, their consent to and joinder in removal are not presently required. If and when the Court has jurisdiction over Defendants May and Bender, however, Defendants Peltz, Rosen and Wendy's/Arby's will seek their joinder and consent in the removal of this action.

Basis for Removal

5. The ground for removal is federal question jurisdiction in that Plaintiff's Complaint includes claims within the original jurisdiction of this Court under 28 U.S.C. § 1331. In his Complaint, Plaintiff alleges that Defendants terminated his employment with Triarc Companies, Inc. because of his medical disability and/or other forms of discrimination in

violation of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. Specifically, Plaintiff claims that he is a qualified individual with a disability (Compl. ¶¶ 24-25) and that “Defendants . . . refused to make a reasonable accommodation to Plaintiff and/or . . . dispensed with the reasonable accommodation they had been providing.” (id. ¶¶ 27-32).

6. Accordingly, this case is a civil action founded on a claim or right arising under the laws of the United States over which this Court has original jurisdiction, and is therefore one which may be removed from the Supreme Court of New York, County of New York pursuant to 28 U.S.C. § 1441(b).

7. Defendants will file a copy of this Notice of Removal with the Clerk of the Supreme Court of the State of New York, County of New York, at the Courthouse located at 60 Centre Street, New York, New York 10007, to effect removal of this action to this Court pursuant to 28 U.S.C. § 1446(d).

8. Defendants reserve all defenses.

WHEREFORE, Defendants pray that the above-referenced civil action proceed in the United States District Court for the Southern District of New York as an action properly removed thereto.

Dated: New York, New York
April 21, 2009

Respectfully submitted,

SEYFARTH SHAW LLP

By 

Lorie Almon [lalmon@seyfarth.com]

Brian Murphy [bmurphy@seyfarth.com]

620 Eighth Avenue, 32nd Floor

New York, New York 10018

(212) 218-5500

Attorneys for Defendants

*Wendy's/Arby's Group, Inc. f/k/a Triarc
Companies, Inc., Nelson Peltz and
Stuart I. Rosen*

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
JAMES TUROWSKI,

Plaintiff,

- against -

TRIARC COMPANIES, INC., NELSON PELTZ, Chairman
& Chief Executive, individually and in his
official capacity, PETER W. MAY, President
& Chief Operating Officer, individually and
in his official capacity, STUART I. ROSEN,
Senior Vice President and Secretary,
Individually and in his official capacity,
and JOHN R. BENDER, individually and in his
Official capacity,

Defendants.

-----X
TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to
serve a copy of your answer, or, if the Complaint is not served with this
Summons, to serve a notice of appearance, on Plaintiff's Attorney within 20
days after the service of Summons, exclusive of the day of service (or within
30 days after the service is complete if this Summons is not personally
delivered to you within the State of New York); and in case of your failure
to appear or answer, judgment will be taken against you by default for the
relief demanded herein.

Dated: Nassau, New York
December 23, 2008

The Nature of the Action: Economic and emotional damages caused to Plaintiff
due to the discriminatory conduct on the part of the defendants based on
Plaintiff's disability and/or perceived disability and retaliation on June
26, 2006 and continuing to the present in violation of New York State
Executive Law § 296 and New York City Administrative Code § 8-107. As a
result of the aforementioned conduct, plaintiff was unjustly terminated,
refused short-term and/or long-term disability, worker's compensation
benefits and unemployment benefits and suffered loss of wages, benefits and
emotional distress and mental anguish.

Relief Sought: Compensatory damages in the amount of \$1,500,000.00 against
all defendants jointly and severally.

Upon your failure to appear, judgment will be taken against you by
default for the sum of \$1,500,000.00 compensatory damages for Plaintiff, from
June 2006 and costs of the action.

Yours, etc.,
CRONIN & BYCZEK, LLP

BY: *Linda M. Cronin*
Linda M. Cronin, Esq.
Attorneys for the Plaintiff
1983 Marcus Avenue - Suite C-120
Lake Success, New York 11042
(516) 358-1700

Defendants Addresses: SEE ATTACHED

SUMMONS WITH NOTICE

Index No.:

Dated Filed:

Plaintiff designates
NEW YORK COUNTY

as the place of trial
The basis of venue is

0811720

Location where incident
Occurred and Defendants
address

FILED
DEC 24 2008
NEW YORK
COUNTY CLERK'S OFFICE

TRIARC Companies, Inc.
280 Park Avenue
New York, New York 10017

John R. Bender
C/o TRIARC Companies, Inc.
280 Park Avenue
New York, New York 10017

Index No.

Year 20

08117201

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JAMES TUROWSKI,

Plaintiff,

- against -

TRIARC Companies, Inc., et al.,

Defendants.

SUMMONS WITH NOTICE

CRONIN & BYCZEK, LLP
ATTORNEYS AT LAW
1981 MARCUS AVENUE, SUITE 227
LAKE SUCCESS, NEW YORK 11042-1055
(516) 358-1700

To:

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated:

.....
Attorney(s) for

PLEASE TAKE NOTICE

☐ that the within is a (certified) true copy of a
NOTICE OF entered in the office of the clerk of the within named Court on 20
ENTRY

☐ that an Order of which the within is a true copy will be presented for settlement to the Hon.
NOTICE OF one of the judges of the within named Court,
SETTLEMENT at 20, at M.

Dated:

CRONIN & BYCZEK, LLP
ATTORNEYS AT LAW
1981 MARCUS AVENUE, SUITE 227
LAKE SUCCESS, NEW YORK 11042-1055

EXHIBIT B

AFFIDAVIT OF SERVICE THROUGH THE SECRETARY OF STATE

Index # 117201-08

Purchased/Filed: December 24, 2008

STATE OF NEW YORK

SUPREME COURT

NEW YORK COUNTY

James Turowski

Plaintiff

against

Triarc Companies, Inc., Nelson Peltz, Chairman & Chief Executive, individually and in his official capacity, et al. DefendantSTATE OF NEW YORK
COUNTY OF ALBANY

SS.:

Diane Koehler, being duly sworn, deposes and says: deponent is over the age of eighteen (18) years; that on January 16, 2009, at 11:45am, at the office of the Secretary of State of the State of New York in the City of Albany, New York deponent served the annexed

Summons with Notice Bearing the above Index # and Filing Date

on

Triarc Companies, Inc., theDefendant in this action, by delivering to and leaving with Carol Vogt,

AUTHORIZED AGENT in the Office of the Secretary of State, of the State of New York, personally at the Office of the Secretary of State of the State of New York, 2 true copies thereof and that at the time of making such service, deponent paid said Secretary of State a fee of 40 dollars; That said service was made pursuant to Section 306 Business Corporation Law.

Deponent further says that deponent knew the person so served as aforesaid to be the agent in the Office of the Secretary of State of the State of New York, duly authorized to accept such service on behalf of defendant.

Description of the person served: Approx. Age: 50 Approx. Wt: 118 Approx. Ht: 5'Color of skin: White Hair color: Brown Sex: Female Other: _____

Sworn to before me on this

21st day of January, 2009

DONNA M. TIDINGS

NOTARY PUBLIC, State of New York
No. 01T14898570, Qualified in Albany County
Commission Expires June 15, 2011*Diane Koehler*

Invoice/Work Order # SP0900450

FILED

FEB 25 2009

NEW YORK
COUNTY CLERK'S OFFICE

FEB 25 2009

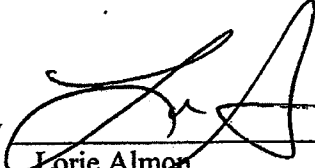
NEW YORK
COUNTY CLERK'S OFFICE

EXHIBIT C

New York, New York
Dated: February 24, 2009

Respectfully submitted,

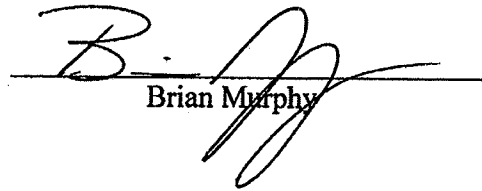
SEYFARTH SHAW LLP

By 
Lorie Almon
Brian Murphy

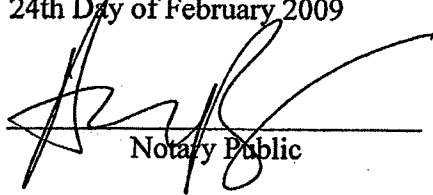
620 Eighth Avenue, 32nd Floor
New York, New York 10018

Attorneys for Defendant
Triarc Companies, Inc.

TO: CRONIN & BYCZEK, LLP
Attorneys at Law
ATTN: Linda M. Cronin, Esq.
1981 Marcus Avenue, Suite 227
Lake Success, New York 11042-1055
(516) 358-1700


Brian Murphy

Sworn to before me this
24th Day of February 2009


Notary Public

My commission expires on January 12, 2012

ALAYNA BALDANZA
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01BA6103726
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES JANUARY 12, 2012

EXHIBIT D

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
JAMES TUROWSKI,

Plaintiff,

- against -

TRIARC COMPANIES, INC., NELSON PELTZ,
Chairman & Chief Executive, individually and in his
Official capacity, PETER W. MAY, President
& Chief Operating Officer, individually and in his
official capacity, STUART I. ROSEN, Senior Vice
President and Secretary, Individually and in his
Official capacity, and JOHN R. BENDER, individually
And in his official capacity

Defendants.
-----X

VERIFIED
COMPLAINT

JURY TRIAL DEMANDED

Index No. 08/117201

NEW YORK
COUNTY CLERK'S OFFICE

MAR 25 2009

NOT COMPARED
WITH COPY FILED

The Plaintiff, JAMES TUROWSKI, by his attorneys, Cronin & Byczek, LLP, as
and for his complaint against the Defendants, TRIARC, NELSON PELTZ, PETER W.
MAY, STUART I. ROSEN and JOHN R. BENDER, respectfully sets forth and alleges
that:

INTRODUCTION

1. Defendant, TRIARC (hereinafter referred to as "defendant") illegally,
maliciously and with prior notice that they would violate the laws of the State of New
York and thereby violate Plaintiff's human rights, implemented a policy depriving
qualified disabled employees including Plaintiff of a reasonable accommodation as
required by law. In addition, defendant altered the terms and conditions of Plaintiff's
employment because of his handicap and disability.

NATURE OF ACTION

2. This is an action for damages and equitable relief under the New York State Executive Law §296, to correct unlawful employment practices on the basis of the Plaintiff's disability and to make plaintiff whole. Defendants deprived Plaintiff of a reasonable accommodation, and altered the terms and conditions of his employment because of his handicap and disability.

3. This is also an action for equitable relief on behalf of the Plaintiff, to prohibit defendants' unlawful implementation of a policy directed towards disabled employees, which alters the terms and conditions of Plaintiff's employment and to order the reinstatement of the Plaintiff to is position.

JURISDICTION

4. Jurisdiction of this Court is invoked pursuant to New York State Executive Law §296, and the New York City Administrative Code §8-107.

VENUE

5. Venue is proper within this Court, as the acts complained of were and are being committed within its boundaries.

PREREQUISITES

6. On or about April 19, 2007 Plaintiff filed a complaint with the New York State Division of Human Rights and the United States Equal Employment Opportunity Commission, hereinafter referred to as the "NYSDHR/EEOC", a copy of which is annexed hereto and made part hereof as Exhibit "A".

7. Subsequent to filing of the complaint, the NYSDHR/EEOC then issued a Right to Sue Notice, a copy of which is annexed hereto and made a part hereof as Exhibit "B", advising Plaintiff that he had the right to institute a Civil Action.

8. Plaintiff complied therewith by filing suit with this Court within the limitations period.

PARTIES

9. Plaintiff, TUROWSKI, is a resident of the State of New York, a citizen of the United States, and is over twenty-one (21) years of age.

10. The defendant, TRIARC was and is a corporation organized and existing under and by virtue of the law of the State of New York, and at all relevant times was Plaintiff's employer.

11. Upon information and belief, and at all times hereinafter mentioned Defendant NELSON PELTZ was a resident of the City of New York and the State of New York; was employed by TRIARC as the Chairman & Chief Executive of TRIARC and was acting within the scope of his employment. This defendant is sued both in his official capacity and individually.

12. Upon information and belief, PELTZ is responsible for the institution and application of policies concerning the denial of an accommodation to Plaintiff.

13. Upon information and belief, and at all times hereinafter mentioned Defendant PETER W. MAY was a resident of the City of New York and the State of New York; was employed by TRIARC as the President & Chief Operating Officer of TRIARC and was acting within the scope of his employment. This defendant is sued both in his official capacity and individually.

14. Upon information and belief, MAY is responsible for the institution and application of policies concerning the denial of an accommodation to Plaintiff.

15. Upon information and belief, and at all times hereinafter mentioned Defendant STUART I. ROSEN was a resident of the City of New York and the State of New York; was employed by TRIARC as the Senior Vice President and Secretary of TRIARC and was acting within the scope of his employment. This defendant is sued both in his official capacity and individually.

16. Upon information and belief, ROSEN is responsible for the institution and application of policies concerning the denial of an accommodation to Plaintiff.

17. Upon information and belief, and at all times hereinafter mentioned Defendant JOHN R. BENDER was a resident of the City of New York and the State of New York; was employed by TRIARC and was acting within the scope of his employment. This defendant is sued both in his official capacity and individually.

18. Upon information and belief, BENDER is responsible for the institution and application of policies concerning the denial of an accommodation to Plaintiff.

BACKGROUND

19. Plaintiff was employed by TRIARC as a chauffeur and bodyguard from July 2002 through June 2006.

20. On January 24, 2004 Plaintiff sustained a traumatic brain injury when Plaintiff slipped and fell, landing on his head. Plaintiff was in a coma for three weeks and when he woke he remained in the hospital for six weeks. Following Plaintiff's release he underwent physical therapy and was able to return to his employment with TRIARC.

21. In 2005, Plaintiff resumed his position of employment with TRIARC. At first, Plaintiff returned to work part time, and then in 2006 Plaintiff began to work full time without any difficult.

22. On June 26, 2006, Plaintiff was notified of his termination from employment with TRIARC.

**AS AND FOR A FIRST CAUSE OF ACTION UNDER THE AMERICANS WITH
DISABILITIES ACT**

23. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "22" with the same force and effect as if fully set forth herein.

24. At all relevant times, Plaintiff has been an individual with a disability within §3(2) of the Americans with Disabilities Act, 42 U.S.C. §12102(2). More particularly, plaintiff has a physical impairment that substantially limits one or more of his major life activities, has a record of such impairment, and/or is regarded by defendants as having such impairment.

25. Plaintiff is a qualified individual with a disability as that term is defined in §101(8) of the ADA, 42 U.S.C. §12111(8). More specifically, Plaintiff is an individual with a disability who, with reasonable accommodation, can perform the essential functions of his job.

26. Defendants are and were Plaintiff's employers and are covered by the terms of the ADA.

27. Defendants have refused to make a reasonable accommodation to Plaintiff and /or has dispensed with the reasonable accommodation they had been providing.

28. Defendants have altered the terms and conditions of Plaintiff's employment because of his handicap, to include terminating his employment and forcing his retirement.

29. Defendants failure to make reasonable accommodations to Plaintiff's physical disability and their disparate treatment of the Plaintiff constitutes discrimination against Plaintiff with respect to the terms, conditions, or privileges of employment. Defendants actions constitute a violation of Section 102(b)(5)(A) of the ADA, 42 U.S.C. §12112(b)(5)(A).

30. Defendants acted with malice or with reckless indifference to the protected rights of Plaintiff.

31. As a direct and proximate result of defendants' discrimination on the basis of disability or perceived disability Plaintiff has suffered lost wages and benefits and lost employment opportunities.

32. Defendants failure to make a reasonable accommodation to Plaintiff has caused, continues to cause and will cause Plaintiff to suffer substantial damages for pecuniary losses, mental anguish, loss of enjoyment of life, as well as other non-pecuniary losses.

33. As a consequence of defendants' unlawful employment practices, Plaintiff is entitled to compensatory damages in the amount of ONE MILLION (\$1,000,000.00) DOLLARS together with interest.

34. Defendants' violation of the ADA was willful, and Plaintiff is entitled to punitive damages in the amount of THREE HUNDRED THOUSAND (\$300,000.00) DOLLARS.

**AS AND FOR A SECOND CAUSE OF ACTION PURSUANT TO THE NEW
YORK STATE EXECUTIVE LAW §296**

35. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "34" with the same force and effect as if fully set forth herein.

36. Based on the foregoing, the defendants intentionally and willfully discriminated against the Plaintiff in his employment on account of his disability in violation of New York State Executive Law §296.

37. As a result of the defendants' actions and of the deprivations of Plaintiff's rights as guaranteed under New York State Executive Law §296, the Plaintiff has been damaged.

38. As a result of the negligent, wrongful, careless, reckless and intentional acts of the defendants, the Plaintiff is seeking compensatory and punitive damages in the amount of ONE MILLION (\$1,000,000.00) DOLLARS.

**AS AND FOR A THIRD CAUSE OF ACTION PURSUANT TO THE NEW YORK
CITY HUMAN RIGHTS LAW**

39. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "38" with the same force and effect as if fully set forth herein.

40. Based on the foregoing, the defendants intentionally and willfully discriminated against the Plaintiff in his employment on account of his disability in violation of New York City Human Rights Law, N.Y.C. Admin. Code §8-107.

41. As a result of the defendants' action and of the deprivations of Plaintiff's rights as guaranteed under New York City Human Rights Law, the Plaintiff has been damaged.

42. As a result of the negligent, wrongful, careless, reckless and intentional acts of the defendants, the Plaintiff is seeking compensatory and punitive damages in the amount of ONE MILLION (\$1,000,000.00) DOLLARS.

AS AND FOR A THIRD CAUSE OF ACTION FOR EQUITABLE RELIEF

43. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "42" with the same force and effect as if fully set forth herein.

44. Defendants have embarked on a course of conduct that deprives the Plaintiff and other employees of TRIARC of their rights under the New York State and New York City laws.

45. The facts and circumstances cited about with reference to the Human Rights and Civil Rights violations suffered by Plaintiff and other employees is an example of how the Defendants have violated Plaintiff's civil and human rights.

46. By virtue thereof, Plaintiff is entitled to equitable relief, prohibiting the defendants from continuing to violate Plaintiff's and other disabled employees' civil and human rights as hereinbefore stated, and affording Plaintiff a reasonable accommodation and reinstatement to his position.

COSTS AND ATTORNEYS' FEES

47. Plaintiff is entitled by law to recover his costs and reasonable attorneys' fees in this action.

WHEREFORE, Plaintiff demands judgment as follows:

A. In the First Cause of Action compensatory damages in favor of Plaintiff against the Defendants in the amount of ONE MILLION (\$1,000,000.00) DOLLARS and punitive damages in the amount of THREE HUNDRED THOUSAND (\$300,000.00) DOLLARS;

B. In the Second Cause of Action compensatory and punitive damages in favor of Plaintiff against the Defendants in the amount of ONE MILLION (\$1,000,000.00) DOLLARS;

C. In the Third Cause of Action compensatory and punitive damages in favor of the Plaintiff against the Defendants in the amount of ONE MILLION (\$1,000,000.00) DOLLARS.

D. In the Fourth Cause of Action, Plaintiff is entitled to equitable relief.

E. Costs and reasonable attorneys' fees.


F. Granting the Plaintiff such other and further relief as may be just.

JURY TRIAL

The Plaintiff, JAMES TUROWSKI, requests a jury trial on all questions of fact raised by the Complaint.

Dated: Lake Success, New York
March 18, 2009

Yours etc,
Cronin & Byczek, LLP



LINDA M. CRONIN
Attorneys for Plaintiff
1983 Marcus Ave, Suite C-120
Lake Success, New York 11042
(516) 358-1700

VERIFICATION

The undersigned, JAMES TUROWSKI, being duly sworn
says:

That I am the Plaintiff to the action; I have read the annexed
VERIFIED COMPLAINT and know the contents thereof and the same is
true to my knowledge, except as to matters therein stated upon
information and belief, and that as to those matters, I believe
them to be true.

The undersigned affirms that the foregoing statements are
true, under the penalties of perjury.

Dated: Lake Success, New York

March 23, 2009


JAMES TUROWSKI

Sworn to before me this
23rd day of March 2009


Notary Public

ROSEMARY A. HORAN
Notary Public, State of New York
No. 01H05076305
Qualified in Nassau County
Commission Expires 4/21/2011

Exhibit "A"

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See Privacy Act Statement before completing this form.

AGENCY

CHARGE NUMBER

☐ FEPA
☒ EEOC

and EEOC

State or local Agency, if any

NAME (Indicate Mr., Ms., Mrs.)

Mr. James M. Turowski

HOME TELEPHONE (Include Area Code)
516-579-8452

STREET ADDRESS

CITY, STATE AND ZIP CODE

10 Phyllis Drive Bethpage, New York 11714

DATE OF BIRTH
7-21-47

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME

Triarc Companies, Inc.

NUMBER OF EMPLOYEES, MEMBERS

Over 250

TELEPHONE (Include Area Code)

212-451-3000

STREET ADDRESS

CITY, STATE AND ZIP CODE

280 Park Avenue, New York, New York 10017

COUNTY
New York

NAME

TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ AGE
☐ RETALIATION ☐ NATIONAL ORIGIN ☒ DISABILITY ☐ OTHER (Specify)
DATE DISCRIMINATION TOOK PLACE
EARLIEST (ADEA/EPA) LATEST (ALL)

6/28/06

☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

See attached

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the foregoing is true and correct.

James M. Turowski

Date

Charging Party (Signature)

NOTARY - (When necessary for State and Local Requirements)

Christopher F. Bellistri

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

James M. Turowski

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(Day, month, and year)

14th day of April 2007

I, James M. Turowski, was subjected to disability discrimination by my former employer, Triarc Companies, Inc.

From July 2002 to June 2006, I was employed by respondent Triarc as a chauffeur and body guard. At all times relevant herein, I performed my duties professionally and satisfactorily.

On January 24, 2004, I sustained a traumatic brain injury when I slipped and fell, landing on my head. After my accident, I was in a coma for three weeks before I awoke in Mount Sinai Hospital. Thereafter, I remained in the hospital for approximately six weeks. Following my release from the hospital, I underwent and completed physical therapy to the point where I was able to return to my employ with respondent.

In 2005, I resumed my position of employment with Triarc. At first, I returned to work part time, and then, in 2006, I began to work full time without any difficulty.

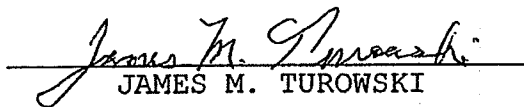
On Monday, June 26, 2006, I was notified of my termination from Triarc Companies, Inc.

I believe that I have been treated differently because of my prior head injury and perceived disability. Triarc, through legal counsel, stated on April 4, 2007 that I "was unable to perform the essential functions of [my] position in a safe and consistent manner, with or without reasonable accommodation." At no time prior to respondent's counsel's communication of April 4, 2007 did anyone at Triarc ever communicate to me that I was performing my job in an unsatisfactory or in an "unsafe" or "inconsistent" manner.

Based upon the foregoing, I charge the above-named respondent with discriminatory practices relating to employment by denying me equal terms, conditions and privileges of employment because of their perception that I was disabled, in violation of Americans With Disabilities Act and the New York State Executive law.

I have read and had an opportunity to correct this Affidavit, and swear that these facts are true and correct to the best of my knowledge and belief.

CHRISTOPHER F. BELLISTRI
Notary Public, State of New York
No. 02BE6130622
Qualified in Queens County
Commission Expires July 18, 2009


JAMES M. TUROWSKI

Sworn to before me this
day of April 19, 2007

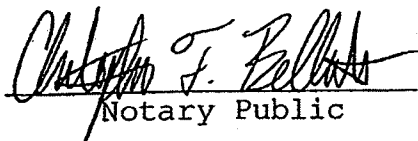

Notary Public

Exhibit "B"

EEOC Form 161-B (3/98)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

Instal
only
D

To: James Turowski
10 Phyllis Drive
Bethpage, NY 11714

From: New York District Office
33 Whitehall Street
5th Floor
New York, NY 10004

☐

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

520-2007-02513

Ricardo E. Jones,
Investigator

(212) 336-3778

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964 and/or the Americans with Disabilities Act (ADA): This is your Notice of Right to Sue, issued under Title VII and/or the ADA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII or the ADA must be filed in a federal or state court **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

☒

More than 180 days have passed since the filing of this charge.

☐

Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.

☒

The EEOC is terminating its processing of this charge.

☐

The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

☐

The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court **WITHIN 90 DAYS** of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.

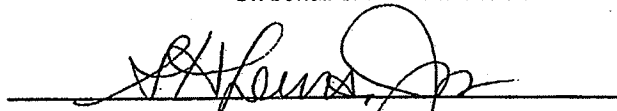
☐

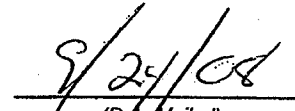
The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission


Spencer H. Lewis, Jr.,
Director


(Date Mailed)

Enclosures(s)

cc: SEYFARTH SHAW LLP.
Attn: Lorie Almon, Esq.
620 Eighth Avenue
New York, NY 10018-1405

CRONIN & BYCZEK, LLP
Attn: Linda M. Cronin, Esq.
1983 Marcus Avenue
Suite C-120
Lake Success, NY 11042

Index No. 117201/2008 Year 20

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JAMES TUROWSKI,

Plaintiff,

- against -

TRIARC Companies, Inc., et al.,

Defendants.

VERIFIED COMPLAINT

Cronin & Byczek, LLP
1983 Marcus Avenue
Suite C-120
Lake Success, New York 11042

(516) 358-1700

To:

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE



NOTICE OF
ENTRY

that the within is a (certified) true copy of a
entered in the office of the clerk of the within named Court on

20



NOTICE OF
SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the Hon.
one of the judges of the within named Court,

at
on

20

, at

M.

Dated:

NEW YORK
COUNTY CLERK'S OFFICE

MAR 25 2009

Cronin & Byczek, LLP
1983 Marcus Avenue
Suite C-120
Lake Success, New York 11042

To:

NOT COMPARED
WITH COPY FILED

EXHIBIT E

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JAMES TUROWSKI,

Plaintiff,

-against-

TRIARC COMPANIES, INC., NELSON PELTZ, Chairman
& Chief Executive, individually and in his
official capacity, PETER W. MAY, President
& Chief Operating Officer, individually and
in his official capacity, STUART I. ROSEN,
Senior Vice President and Secretary,
Individually and in his official capacity,
and JOHN R. BENDER, individually and in his
Official capacity,

Defendants.

STATE OF NEW YORK, COUNTY OF NASSAU

SS.:

JOHN MICHAEL DEVITO, being duly sworn deposes and says: that deponent is not a party to his action, is over 18 years of age and resides at Farmingdale, NY 11735. That on April 1, 2009 at 12:57 p.m. at 543 Byram Lake Road, Mount Kisco, New York 10549, deponent served the within Summons with Notice and Verified Complaint on defendant Nelson Peltz therein named.

1. INDIVIDUAL by delivering a true copy of each to said defendants personally; deponent knew the person so served to the person described as said defendant therein.
2. CORPORATION a domestic corporation; by delivering thereat a true copy of each to personally, deponent knew said corporation so served to be the corporation described in said summons as said defendant and knew said individual to be AUTHORIZED TO ACCEPT thereof
3. x SUITABLE AGE PERSON by delivering thereat a true copy of each to a person of Butch suitable age discretion. Said premises is defendant's - actual place of business - dwelling house - usual place of abode - within the state.
4. AFFIXING TO DOOR, ETC. by affixing a true copy of each to the door of said premises, which is defendant's - actual place of business - dwelling house - usual place of abode - within the state. Deponent was unable with due diligence to find defendant or a person of suitable age and discretion, thereat having called there
- x MAILING use with 3 or 4 (if applicable) Deponent also enclosed a copy of same in a postpaid sealed wrapper properly addresses to defendant at defendant's last known residence, at 543 Byram Lake Road, Mount Kisco, New York 10549 on April 15, 2009 and deposited said wrapper in - a post office - depository under exclusive care and custody of the United States Postal Service within New York State.

MAILED IN AN ENVELOPE MARKED PERSONAL AND CONFIDENTIAL

 x DESCRIPTION Deponent describes the individual served as follows:
1 or 3

<u> </u> x <u> </u> Male	<u> </u> x <u> </u> White Skin	<u> </u> Black Hair	<u> </u> 14-20 Yrs.	<u> </u> Under 5'	<u> </u> Under 100 lbs.
<u> </u> Female	<u> </u> Black Skin	<u> </u> Brown Hair	<u> </u> 21-35 Yrs.	<u> </u> 5'0" - 5'3"	<u> </u> 100-130 lbs.
	<u> </u> Brown Skin	<u> </u> Blond Hair	<u> </u> 36-50 Yrs.	<u> </u> x <u> </u> 5'4" - 5'8"	<u> </u> x <u> </u> 131-160 lbs.
		<u> </u> x <u> </u> Gray Hair	<u> </u> x <u> </u> 51-65 Yrs.	<u> </u> 5'9" - 6'0"	<u> </u> 161-200 lbs.
		<u> </u> Red Hair	<u> </u> Over 65 Yrs.	<u> </u> Over 6'	<u> </u> Over 200 lbs.
		<u> </u> White Hair			
		<u> </u> x <u> </u> Mustache	<u> </u> x <u> </u> Glasses		

FILED
APR 15 2009
NEW YORK
COUNTY CLERK'S OFFICE

Sworn to before me on April 15, 2009

Rosemary A. Horan

ROSEMARY A. HORAN
Notary Public, State of New York
No. 01H05076305
Qualified in Nassau County
Commission Expires 4/21/2011

Index No.: 08/17201

AFFIDAVIT OF SERVICE
OF SUMMONS
WITH NOTICE AND VERIFIED COMPLAINT

John Michael Devito
JOHN MICHAEL DEVITO

EXHIBIT F

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JAMES TUROWSKI,

Plaintiff,

-against-

TRIARC COMPANIES, INC., NELSON PELTZ, Chairman
& Chief Executive, individually and in his
official capacity, PETER W. MAY, President
& Chief Operating Officer, individually and
in his official capacity, STUART I. ROSEN,
Senior Vice President and Secretary,
Individually and in his official capacity,
and JOHN R. BENDER, individually and in his
Official capacity,

Defendants.

STATE OF NEW YORK, COUNTY OF NASSAU

SS.:

JOHN MICHAEL DEVITO, being duly sworn deposes and says: that deponent is not a party to his action, is over 18 years of age and resides at Farmingdale, NY 11735. That on April 1, 2009 at 2:43 p.m. at 137 Hirst Road, Briarcliff Manor, New York 10510, deponent served the within Summons with Notice and Verified Complaint on defendant Stuart I. Rosen therein named.

1. INDIVIDUAL by delivering a true copy of each to said defendants personally; deponent knew the person so served to the person described as said defendant therein.
2. CORPORATION a domestic corporation, by delivering thereat a true copy of each to personally, deponent knew said corporation so served to be the corporation described in said summons as said defendant and knew said individual to be AUTHORIZED TO ACCEPT thereof
3. x SUITABLE AGE PERSON by delivering thereat a true copy of each to a person of Jennifer Rosen suitable age discretion. Said premises is defendant's - actual place of business - dwelling house - usual place of abode - within the state.
4. AFFIXING TO DOOR, ETC. by affixing a true copy of each to the door of said premises, which is defendant's - actual place of business - dwelling house - usual place of abode - within the state. Deponent was unable with due diligence to find defendant or a person of suitable age and discretion, thereat having called there

x MAILING
use with 3 or 4
(if applicable)

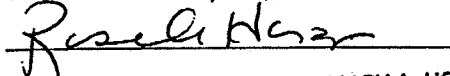
Deponent also enclosed a copy of same in a postpaid sealed wrapper properly addresses to defendant at defendant's last known residence, at 543 Byram Lake Road, Mount Kisco, New York 10549 on April 15, 2009 and deposited said wrapper in - a post office - depository under exclusive care and custody of the United States Postal Service within New York State.

MAILED IN AN ENVELOPE MARKED PERSONAL AND CONFIDENTIAL

x DESCRIPTION Deponent describes the individual served as follows:
1 or 3

<u>Male</u>	<u>x</u> <u>White Skin</u>	<u>X</u> <u>Black Hair</u>	<u>14-20 Yrs.</u>	<u>Under 5'</u>	<u>Under 100 lbs.</u>
<u>X</u> <u>Female</u>	<u>Black Skin</u>	<u>Brown Hair</u>	<u>21-35 Yrs.</u>	<u>50" - 5'3"</u>	<u>X</u> <u>100-130 lbs.</u>
	<u>Brown Skin</u>	<u>Blond Hair</u>	<u>X</u> <u>36-50 Yrs.</u>	<u>x</u> <u>54" - 5'8"</u>	<u>131-160 lbs.</u>
		<u>Gray Hair</u>	<u>51-65 Yrs.</u>	<u>59"-6'0"</u>	<u>161-200 lbs.</u>
		<u>Red Hair</u>	<u>Over 65 Yrs.</u>	<u>Over 6'</u>	<u>Over 200 lbs.</u>
		<u>White Hair</u>			

Sworn to before me on April 15, 2009



ROSEMARY A. HORAN
Notary Public, State of New York
No. 01H05076305
Qualified in Nassau County
Commission Expires 4/21/2011



JOHN MICHAEL DEVITO